

ESTTA Tracking number: **ESTTA583481**

Filing date: **01/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Defendant Quentin Davis
Correspondence Address	QUENTIN DAVIS PO BOX 47893 TAMPA, FL 33646 UNITED STATES nevisbaby@hotmail.com, ThaRilest@yahoo.com
Submission	Answer
Filer's Name	Quentin Davis
Filer's e-mail	nevisbaby@hotmail.com
Signature	/Quentin Davis/
Date	01/23/2014
Attachments	Registrant Response to First Amended Petition to Cancel_Proceeding No. 92056168.pdf(512997 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF REGISTRATION NO.: **4,106,459**

For the mark **LEGENDARY**

**Date of Issue: February 28, 2012**

LEGEND PICTURES, LLC,	)	
	)	
Petitioners,	)	
	)	
v.	)	Proceeding No. <u>92056168</u>
	)	
	)	
QUENTIN DAVIS	)	
Registrant.	)	
	)	

**REGISTRANT’S RESPONSE TO FIRST AMENDED PETITION TO CANCEL**

Registrant, Quentin Davis, through personal and sound representation, does hereby respond to the petition as follows:

1. Registrant admits allegations contained in paragraph 1 of petition to cancel as far as the allegations do not in any way or at all imply that Registration No. 3412677 for standard character mark “LEGENDARY PICTURES” possesses any valid exclusive rights to the mark “LEGENDARY”.
2. Registrant is without knowledge or information sufficient to verify allegations contained in paragraph 2 of petition to cancel concerning first use in commerce date and status of contestability and therefore denies the same.
3. Registrant admits allegations contained in paragraph 3 of petition to cancel as far as the allegations do not in any way or at all imply that Registration No. 3656926 for stylized mark

“LEGENDARY PICTURES” (including medallion) possesses any valid exclusive rights to the mark “LEGENDARY”.

Registrant would like to bring to the attention of the Trademark Trial and Appeal Board that Petitioner’s **Registration No. 3656926** for stylized mark “LEGENDARY PICTURES” (including medallion) **upon date of issue, July 21, 2009, did contain both words “LEGENDARY” and “PICTURES”** (as well as medallion).

Petitioner, without request, permission, or involvement of Registrant, voluntarily requested Registration No. 3656926 for amendment on Aug. 29, 2012. The amended drawing removed the word “PICTURES” from Registration No. 3656926 and left only the word “LEGENDARY” (including medallion) remaining.

4. Registrant is without knowledge or information sufficient to verify allegations contained in paragraph 4 of petition to cancel concerning first use in commerce date and therefore denies the same.

5. Registrant admits allegations contained in paragraph 5 of petition to cancel as far as the allegations do not in any way or at all imply that Registration No. 3621043 for stylized mark “LEGENDARY PICTURES” (including medallion) possesses any valid exclusive rights to the mark “LEGENDARY”.

Registrant would like to bring to the attention of the Trademark Trial and Appeal Board that Petitioner’s **Registration No. 3621043** for stylized mark “LEGENDARY PICTURES” (including medallion), **upon date of issue, May 12, 2009, did contain both words “LEGENDARY” and “PICTURES”** (as well as medallion).

Petitioner, without request, permission, or involvement of Registrant, voluntarily requested Registration No. 3621043 for amendment on Aug. 29, 2012. The amended drawing

removed the word “PICTURES” from Registration No. 3656926 and left only the word “LEGENDARY” (including medallion) remaining.

6. Registrant is without knowledge or information sufficient to verify allegations contained in paragraph 6 of petition to cancel concerning first use in commerce date and therefore denies the same.

7. Registrant is without knowledge or information sufficient to form a belief as to claims made in paragraph 7 of petition to cancel and therefore denies the same.

8. Registrant is without knowledge or information sufficient to form a belief as to claims made in paragraph 8 of petition to cancel and therefore denies the same.

9. Registrant denies allegations contained in paragraph 9 of petition to cancel that consumers are likely to believe that Registrant and Petitioner are affiliated.

Registrant also denies claims that media reports **commonly** refer to Petitioner using the shortened mark “LEGENDARY”, as extensive searches have been made to locate evidence in support of this claim. No evidence to validate this claim has been found. No article or media report referring to the Petitioner by the shortened mark “Legendary” before the Registrant’s date of Registration (Feb. 28<sup>th</sup> 2012) could be found.

10. Registrant is without knowledge or information sufficient to form a belief as to allegations made in paragraph 10 of petition to cancel as Petitioner did not specify the “goods and services” in mention. Registrant therefore does not admit.

11. Registrant denies allegations contained in paragraph 11 of petition to cancel.

12. Registrant denies allegations contained in paragraph 12 of petition to cancel concerning presumptions of likely confusion, deception, or mistake caused by Registrant’s mark “LEGENDARY” on the grounds that:

Registrant **has not** and **does not** in any way, shape, form, or matter, utilize the ownership and/or any of the services listed in Registration No. 4106459 for the mark "LEGENDARY" in any manner that would compete with, impair the distinctiveness of, or harm the reputation of the Petitioner and/or any complete service mark(s) and/or complete trademarks(s) that were already in possession of Petitioner before the registration issue date of Registration No. 4106459 for the mark "LEGENDARY" (Feb. 28, 2012).

Registrant **has not** and **does not** associate any use of Registration No. 4106459 for the mark "LEGENDARY" or the services therein, in any way, shape, form, matter, or affiliation to the Petitioner or any of Petitioner's service mark(s) and/or trademark(s).

The disparity in nature and existential difference between the Petitioner and Registrant are extremely vast if not altogether incomparable (Petitioner did declare itself to be a "company" and did also declare Registrant to be an "individual" in preface of the petition to cancel).

Registrant's use of Registration No. 4106459 for the mark "LEGENDARY" has not ever, to the knowledge of the Registrant, been assumed by any individual to be affiliated with, associated with, or supported by the Petitioner in any manner whatsoever, and no information that would corroborate the contrary has been presented to the Registrant.

13. Registrant admits allegations contained in paragraph 13 of petition to cancel.
14. Registrant admits allegations contained in paragraph 14 of petition to cancel.
15. Registrant admits allegations contained in paragraph 15 of petition to cancel.
16. Registrant denies allegations contained in paragraph 16 of petition to cancel
17. Registrant denies allegations contained in paragraph 17 of petition to cancel.
18. Registrant denies allegations contained in paragraph 18 of petition to cancel.
19. Registrant denies allegations contained in paragraph 19 of petition to cancel.

20. Registrant denies allegations contained in paragraph 20 of petition to cancel.

21. Registrant denies allegations contained in paragraph 21 of petition to cancel.

Registrant submitted statement of use in factual confidence.

22. Registrant admits the allegations contained in paragraph 22 of petition to cancel only so far as the allegations present a complete and accurate representation of the actions of the Examining Attorney and denies the allegations in as much as they are an incomplete and/or inaccurate representation of the actions of the Examining Attorney.

23. Registrant denies allegations contained in paragraph 23 of petition to cancel.

24. Registrant admits the allegations contained in paragraph 24 of petition to cancel only so far as the statement and quotation presented represents accurate interpretation of the legal references mentioned and contain no implications whatsoever concerning the Registrant.

25. Registrant admits allegations contained in paragraph 25 of petition to cancel.

26. Registrant admits allegations contained in paragraph 26 of petition to cancel only so far as the registration in mention is Registration No. 4106459 for the mark "LEGENDARY".

27. Registrant denies allegations contained in paragraph 27 of petition to cancel.

28. Registrant denies allegations contained in paragraph 28 of petition to cancel.

29. Registrant denies allegations contained in paragraph 29 of petition to cancel.

30. Registrant denies allegations contained in paragraph 30 of petition to cancel.

31. Registrant denies allegations contained in paragraph 31 of petition to cancel.

32. Registrant admits allegations contained in paragraph 32 of petition to cancel so far as the allegations only represent true and factual information and do not contain any implication whatsoever of any Petitioner right or entitlement.

33. Registrant admits allegations contained in paragraph 33 of petition to cancel so far as the allegations only represent true and factual information and do not contain any implication whatsoever of any Petitioner right or entitlement.

34. Registrant admits allegations contained in paragraph 34 of petition to cancel so far as the allegations only represent true and factual information and do not contain any implication whatsoever of any Petitioner right or entitlement.

35. Registrant admits allegations contained in paragraph 35 of petition to cancel so far as the allegations only represent true and factual information and do not contain any implication whatsoever of any Petitioner right or entitlement.

36. Registrant admits the allegations contained in paragraph 36 of petition to cancel only so far as the allegations present a complete and accurate representation of the actions of the Examining Attorney and denies the allegations in as much as they are an incomplete and/or inaccurate representation of the actions of the Examining Attorney.

37. Registrant admits claims contained in paragraph 37 of petition to cancel only so far as the registration in mention is Registration No. 4106459 for the mark "LEGENDARY".

38. Registrant denies allegations contained in paragraph 38 of petition to cancel.

39. Registrant denies allegations contained in paragraph 39 of petition to cancel.

40. Registrant is without knowledge or information sufficient to form a belief as to allegations made in paragraph 40 of petition to cancel. Registrant therefore denies the same.

41. Registrant denies allegations contained in paragraph 41 of petition to cancel.

42. Registrant denies allegations contained in paragraph 42 of petition to cancel.

## **AFFIRMATIVE DEFENSES**

1. Petitioner alleges a likelihood of confusion and that Petitioner “has been or will be damaged by the continued existence of” Registrant’s mark, yet Petitioner expressed no interest in opposing the mark during the period of opposition.
2. Petitioner only sought to contest Registrant’s mark after receiving notice that Petitioner’s applications were suspended by the United States Patent and Trademark office in apparent citation against Registrant’s established mark.
3. Petitioner’s reactive behavior conveys that Petitioner is not truthfully concerned with a likelihood of confusion or damage, but is only concerned with obtaining the rights to the Registrant’s legally acquired trademark.
4. Petitioner has accused Registrant of fraud based on unfounded allegations of Non-use in commerce of Registration No. 4106459 for the mark "LEGENDARY", for all services listed in the statement of use.
5. Registrant did, in confidence and truth, on Dec. 27, 2011, submit a statement of use to the United States Patent and Trademark office and followed all legal and lawful procedures to rightfully obtain Registration No. 4106459 for the mark "LEGENDARY" and the services therein.
6. Though Petitioner would attempt to devalue and vilify the Registrant’s character in effort to deceive and coerce the Trademark Trial and Appeal Board, Petitioner will not be able to prove that Registrant has not used in commerce any of the services contained in Registration No. 4106459 for the mark "LEGENDARY" or that Registrant had not truthfully and on reasonable and legitimate pretenses, submitted the statement of use to the United States Patent and Trademark office.



7. In the petition to cancel, Petitioner mentioned some of the registrations in its possession. Among these were:

[1]Registration No. 3656926 for stylized mark "LEGENDARY PICTURES" (including medallion), date of issue, July 21, 2009 - &

[2]Registration No. 3621043 for stylized mark "LEGENDARY PICTURES" (including medallion), date of issue, May 12, 2009

8. Upon the original registration dates, both Registrations No. 3656926 and No. 3621043 did contain both words "LEGENDARY" and "PICTURES" (both registrations including identifying medallion).

9. Petitioner claims to be concerned with possible damage and the likelihood of confusion between Petitioner's marks and Registrant's mark, yet on Aug. 29, 2012, without request, permission, or involvement of the Registrant, Petitioner filed requests to amend these two marks (Registrations No. 3656926 and No. 3621043). The amended drawings submitted for both registrations removed the word "PICTURES" from the marks and left only the word "LEGENDARY" (including medallion).

10. Petitioner's Registrations No. 3656926 and No. 3621043 both contain service uses for "production and distribution of music video programs".

11. Registrant's services for the mark "LEGENDARY" contain "production and distribution of musical audio and video programs".

12. Petitioner knew or should have known that the requested amendments would increase any likelihood of mistake or confusion concerning the marks.

13. Petitioner may not claim ignorance of fact that Registrant was already in lawful possession of Registration No. 4106459 for the mark "LEGENDARY", as Petitioner's requests for

amendment (submitted Aug. 29, 2012) were filed **after** Petitioner was issued notification of suspension (May 7, 2012) for apparent citation against Registrant's already established mark.

14. Petitioner failed to accurately identify its interest in and acquire the rights to the mark "LEGENDARY" for any of the services listed in Registration No. 4106459 **prior to** the Registrant's date of issue for the mark, wherefore Petitioner intentionally and deceptively encroached upon the established rights of the Registrant.

15. Petitioner's actions are counterintuitive to its alleged concerns and directly contradict them.

16. Petitioner's false alleged concerns of possible confusion are completely devalued by the Petitioner's deliberate intention to render its marks more similar to that of the Registrant.

As a result of these actions, any damage or confusion that may result upon the Petitioner will be of its own doing.

17. Petitioner contacted Registrant in writing on May 30, 2012 and through the content of that correspondence, Petitioner did attempt intimidation tactics toward the Registrant including accusations of Federal trademark infringement, Federal unfair competition, and false advertising.

18. Petitioner has since retracted said accusations but was not pleased when Registrant refused to submit partial or complete rights of Registration No. 4106459 for the mark "LEGENDARY" to the Petitioner.

19. When Petitioner was asked by the Registrant on several occasions, why, if any entitlement whatsoever was truly presumed, Petitioner had not opposed Registrant's application before its date of Registration, Petitioner could give no affirmative answer.

20. Petitioner is barred from seeking cancellation of Registration No. 4106459 for the mark "LEGENDARY" under the doctrines of ***waiver, estoppel, laches, and unclean hands***.

Petitioner's actions do not at all display concern for confusion or damage on its behalf. The actions and empty accusations that the Petitioner has employed convey nothing more than desperate attempts to obtain the legally acquired rights of the Registrant.

WHEREFORE, Registrant prays that the Petition to Cancel Registration No. 4106459 for the mark "LEGENDARY" be dismissed with prejudice.

Respectfully Submitted,

/Quentin Davis/  
Quentin Davis – Registrant  
P.O. Box 47893  
Tampa, Florida 33646

January 23, 2014  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of January 2014, a true and complete copy of the foregoing **REGISTRANT'S RESPONSE TO FIRST AMENDED PETITION TO CANCEL** was served to Plaintiff via electronic mail to:

Carla Calcagno at e-mail addresses:

**carla.calcagno@calcagnolaw.com**

and

**cccalcagno@gmail.com**

Calcagno Law  
1250 24th Street NW, Suite 300  
Washington, DC 20037

/Gloria Walters/

---

Gloria Walters  
Administrative Assistant to the Registrant  
P.O. Box 47893  
Tampa, Florida 33646